

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIA FABIA SIMONETTI,

Plaintiff,

-against-

GERARD ANTHONY SIMONETTI; AND  
JOSEPH A. SIMONETTI,

Defendants.

**USDC SDNY**  
**DOCUMENT**  
**ELECTRONICALLY FILED**  
**DOC #:** \_\_\_\_\_  
**DATE FILED:** 11/20/2024

24-CV-01859 (MMG)

**ORDER**

MARGARET M. GARNETT, United States District Judge:

On July 22, 2024, Defendants Gerard Anthony Simonetti and Joseph Simonetti (“Defendants”) moved to dismiss this case pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and arguing, *inter alia*, that this case is identical to multiple cases already adjudicated in New York State Court. *See* Dkt. No. 12. On October 24, 2024, the Court referred this matter to the designated Magistrate Judge, Judge Barbara C. Moses, for General Pretrial matters and a Report and Recommendation on Defendants’ pending motion to dismiss. *See* Dkt. No. 22.

On November 13, 2024, Plaintiff *pro se* Maria Fabia Simonetti (“Plaintiff”) submitted a Proposed Order to Show Cause seeking a preliminary injunction and temporary restraining order with emergency relief. *See* Dkt. No. 25 (the “Order to Show Cause”). The Order to Show Cause does not request any specific relief, *see id.* at 1-2, but the Plaintiff’s Affidavit submitted in support thereof alleges various actions by Defendants in connection with an apparent custody battle relating to Plaintiff’s daughter, *see id.* at 3-4. The Order to Show Cause and the materials submitted in support thereof do not provide a sufficient basis for the Court to issue a preliminary injunction or temporary restraining order, even construed liberally. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006) (while filings made by *pro se* litigants must be construed liberally and to raise the strongest arguments they suggest, *pro se* status does not exempt a party from compliance with relevant rules of procedural and substantive law, nor must courts excuse frivolous or vexatious submissions). As but one example, even accepting all of the Plaintiff’s factual assertions as true, the Plaintiff’s motion provides no legal authority, and the Court is aware of none, that would allow it to issue a custody order for a child born in Brazil and presently residing in Brazil, who has never been in the United States and has thus not been removed from the United States (even though the child may have U.S. citizenship derived from her parents).

For these reasons, and because of the pending motion to dismiss and the ongoing referral to Magistrate Judge Moses, the Court hereby **DECLINES** to sign the Order to Show Cause and

Plaintiff's motion for a preliminary injunction and temporary restraining order is DENIED WITHOUT PREJUDICE to renewing should Plaintiff's complaint survive Defendants' pending motion to dismiss.

Furthermore, Plaintiff is HEREBY PROHIBITED from emailing or calling Chambers for the undersigned, *see* Individual Rules III(B)(1) ("*Pro se* parties may not call the Court"); III(B)(2) ("No documents or court filings may be sent directly to Chambers. Unless the Court orders otherwise, all communications with the Court will be filed on the public docket."), available at <https://nysd.uscourts.gov/hon-margaret-m-garnett>. Plaintiff is FURTHER ORDERED to direct all future letters to Magistrate Judge Moses pursuant to this Court's October 24, 2024 order of reference.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff.

Dated: November 20, 2024  
New York, New York

SO ORDERED.



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MARGARET M. GARNETT  
United States District Judge